

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRISHA MEJIA DONNELL,

Plaintiff,

v.

CALIFORNIA HIGHWAY PATROL, et
al.,

Defendants.

No. 2:21-cv-01974-KJM-CKD PS

FINDINGS AND RECOMMENDATIONS TO
DISMISS FOR FAILURE TO SERVE

On October 25, 2021, plaintiff filed this employment discrimination action and paid the filing fee.¹ (ECF No. 1.) That same day, the clerk served plaintiff at the front counter with the summons and case-initiating documents. (ECF Nos. 2, 3.) Plaintiff was ordered to complete service of process on all defendants within 90 days, and to file a certificate reflecting that service had been accomplished. (ECF No. 3 at 2.) See Fed. R. Civ. P. 4(m).

Neither of the two named defendants have entered an appearance in the case, and there is no indication that plaintiff has served them. On January 27, 2022, noting the apparent lack of service, the court on its own motion extended the service deadline for an additional 30 days. (ECF No. 4.) The court ordered plaintiff to file proof of service on each defendant within that

¹ Because plaintiff is self-represented, all pretrial proceedings are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21).

1 extended deadline, or to file a notice of voluntary dismissal. (Id. at 2-3.) The service extension
2 order (and copies of the originally issued orders and summons) were served on plaintiff by mail.
3 The extended service deadline expired on February 28, 2022, and plaintiff has not filed a proof of
4 service—or any other document—with the court.

5 As explained in the court’s prior order, service of the summons and complaint must occur
6 within 90 days of filing the complaint, unless otherwise ordered. Fed. R. Civ. P. 4(c)(1) & (m).
7 If a defendant is not served by the deadline, the court—on motion or on its own after notice to the
8 plaintiff—must dismiss the action without prejudice against that defendant or order that service
9 be made within a specified time. Fed. R. Civ. P. 4(m).

10 Well over 90 days have passed since the complaint was filed, and the court has already
11 granted an extension of time for service. Because plaintiff has not shown good cause for failing
12 to serve any defendant—indeed has not responded at all to the court’s orders regarding service—
13 dismissal is warranted for all defendants pursuant to Rule 4(m).

14 If plaintiff files timely objections to these findings and recommendations and indicates
15 that she is ready to litigate this case at present, the undersigned will withdraw these findings and
16 recommendations.

17 Accordingly, IT IS HEREBY RECOMMENDED that:

- 18 1. Plaintiff’s claims be DISMISSED without prejudice pursuant to Federal Rule of Civil
19 Procedure 4(m) for failure to serve; and
- 20 2. The Clerk of Court be directed to close this case.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days
23 after being served with these findings and recommendations, plaintiff may file written objections
24 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings
25 and Recommendations.” Plaintiff is advised that failure to file objections within the specified time

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1 may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 Dated: March 10, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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